

# HOUSE BILL 536

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By: **Chair, Health and Government Operations Committee (By Request – Departmental – Aging) and Delegates Hubbard, Benson, Bromwell, Costa, Donoghue, Elliott, Hammen, Kach, Kipke, Krebs, Kullen, McDonough, Mizeur, Montgomery, Morhaim, Nathan-Pulliam, Oaks, Pena-Melnyk, Pendergrass, Reznik, Riley, Tarrant, and V. Turner**

Introduced and read first time: February 2, 2010

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 17, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Department of Aging – Long-Term Care Ombudsman Program**

3 FOR the purpose of repealing certain powers and duties of the Secretary of Aging;  
4 repealing certain provisions of law relating to the Maryland Long-Term Care  
5 Ombudsman Program and the Maryland Long-Term Care Ombudsman;  
6 reestablishing the Long-Term Care Ombudsman Program in the Department of  
7 Aging; specifying the purpose of the Program; establishing the Office of the  
8 Long-Term Care Ombudsman in the Department; providing for the  
9 ~~appointment~~ selection of the State Long-Term Care Ombudsman; establishing  
10 certain powers and duties of the Secretary, the State Long-Term Care  
11 Ombudsman, and designated ombudsmen; establishing the qualifications of  
12 entities qualified to be designated as local long-term care ombudsman entities;  
13 requiring that an ombudsman have access to certain facilities, documents, and  
14 records; requiring the Secretary to adopt certain regulations; requiring the  
15 Secretary to adopt certain regulations in consultation with area agencies on  
16 aging; making it a misdemeanor, subject to a certain penalty, to willfully  
17 interfere with an ombudsman's performance of an official duty or to retaliate or  
18 make reprisals against certain persons; requiring the State Long-Term Care  
19 Ombudsman to submit a certain annual report to the Governor and the General  
20 Assembly; requiring the Department of Aging to reconvene a certain workgroup;  
21 requiring the workgroup to meet on a certain basis; providing for the duties of

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 the Department and the State Long-Term Care Ombudsman in conducting the  
 2 workgroup; defining certain terms; and generally relating to the Long-Term  
 3 Care Ombudsman Program.

4 BY repealing  
 5 Article – Human Services  
 6 Section 10–212 and 10–213  
 7 Annotated Code of Maryland  
 8 (2007 Volume and 2009 Supplement)

9 BY adding to  
 10 Article – Human Services  
 11 Section 10–901 through 10–911 to be under the new subtitle “Subtitle 9.  
 12 Long-Term Care Ombudsman Program”  
 13 Annotated Code of Maryland  
 14 (2007 Volume and 2009 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 16 MARYLAND, That Section(s) 10–212 and 10–213 of Article – Human Services of the  
 17 Annotated Code of Maryland be repealed.

18 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
 19 read as follows:

20 **Article – Human Services**

21 **SUBTITLE 9. LONG-TERM CARE OMBUDSMAN PROGRAM.**

22 **10–901.**

23 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
 24 **INDICATED.**

25 **(B) “LOCAL LONG-TERM CARE OMBUDSMAN ENTITY” MEANS AN ENTITY**  
 26 **DESIGNATED BY ~~THE SECRETARY AND~~ THE STATE LONG-TERM CARE**  
 27 **OMBUDSMAN TO ASSIST IN CARRYING OUT THE DUTIES OF THE PROGRAM.**

28 **(C) “LONG-TERM CARE FACILITY” MEANS:**

29 **(1) A NURSING FACILITY, AS DEFINED IN § 19–301 OF THE**  
 30 **HEALTH – GENERAL ARTICLE; OR**

31 **(2) AN ASSISTED LIVING PROGRAM, AS DEFINED IN §**  
 32 **19–1801 OF THE HEALTH – GENERAL ARTICLE.**

1 (D) "OFFICE" MEANS THE OFFICE OF THE LONG-TERM CARE  
2 OMBUDSMAN ESTABLISHED UNDER THIS SUBTITLE.

3 (E) "OMBUDSMAN" MEANS:

4 (1) THE STATE LONG-TERM CARE OMBUDSMAN; AND

5 (2) ANY INDIVIDUAL, WHETHER A PAID EMPLOYEE OR A  
6 VOLUNTEER, WHO IS DESIGNATED BY THE STATE LONG-TERM CARE  
7 OMBUDSMAN AS AN OMBUDSMAN.

8 (F) "PROGRAM" MEANS THE LONG-TERM CARE OMBUDSMAN  
9 PROGRAM ESTABLISHED UNDER THIS SUBTITLE.

10 (G) "RESIDENT" MEANS A RESIDENT OF A LONG-TERM CARE FACILITY  
11 LOCATED IN THE STATE.

12 (H) "STATE LONG-TERM CARE OMBUDSMAN" MEANS THE INDIVIDUAL  
13 ~~APPOINTED~~ SELECTED BY THE SECRETARY UNDER § 10-903 OF THIS SUBTITLE.

14 10-902.

15 (A) THERE IS A LONG-TERM CARE OMBUDSMAN PROGRAM IN THE  
16 DEPARTMENT.

17 (B) THE PURPOSE OF THE PROGRAM IS TO FULFILL THE  
18 REQUIREMENTS OF:

19 (1) THE PROGRAM UNDER THIS SUBTITLE; AND

20 (2) THE FEDERAL OLDER AMERICANS ACT, INCLUDING THE  
21 REQUIREMENTS OF 42 U.S.C. § 3058G.

22 (C) (1) THE SECRETARY SHALL ADOPT REGULATIONS NECESSARY TO  
23 CARRY OUT THIS SUBTITLE.

24 (2) THE REGULATIONS ADOPTED UNDER SUBSECTION (C) OF THIS  
25 SECTION SHALL ESTABLISH:

26 (I) THE REQUIREMENTS FOR AN ANNUAL REVIEW BY THE  
27 DEPARTMENT OF ALL OMBUDSMAN ACTIVITIES; AND

28 (II) THE PROCESS FOR ASSISTING INDIVIDUALS WITH  
29 ORGANIZING AND OPERATING A RESIDENT COUNCIL AND A FAMILY COUNCIL IN  
30 A LONG-TERM CARE FACILITY.

1 **10-903.**

2 (A) THERE IS AN OFFICE OF THE LONG-TERM CARE OMBUDSMAN IN  
3 THE DEPARTMENT.

4 (B) (1) UNLESS THE SECRETARY IS SUBJECT TO A CONFLICT OF  
5 INTEREST THAT CANNOT BE REMOVED, THE SECRETARY SHALL ~~APPOINT~~  
6 SELECT A STATE LONG-TERM CARE OMBUDSMAN.

7 (2) IF THE SECRETARY IS SUBJECT TO A CONFLICT OF INTEREST  
8 THAT CANNOT BE REMOVED, THE SECRETARY SHALL DESIGNATE ANOTHER  
9 INDIVIDUAL, WHO IS NOT SUBJECT TO A CONFLICT OF INTEREST, TO ~~APPOINT~~  
10 SELECT THE STATE LONG-TERM CARE OMBUDSMAN.

11 (C) THE STATE LONG-TERM CARE OMBUDSMAN:

12 (1) SHALL PERSONALLY ADMINISTER THE OFFICE;

13 (2) SHALL HAVE EXPERTISE AND EXPERIENCE IN THE FIELD OF  
14 LONG-TERM CARE ADVOCACY, ~~OTHER CONSUMER PROTECTION SERVICES, OR~~  
15 ~~AGING~~;

16 (3) MAY NOT HAVE ANY CONFLICT OF INTEREST WITH THE  
17 POSITION; AND

18 (4) SHALL, ON A FULL-TIME BASIS, PERFORM DUTIES RELATED  
19 TO THE PROGRAM.

20 (D) THE STATE LONG-TERM CARE OMBUDSMAN SHALL PERSONALLY  
21 OR THROUGH DESIGNATED OMBUDSMEN:

22 (1) IDENTIFY, INVESTIGATE, AND ~~OLVE~~ RESOLVE COMPLAINTS  
23 FROM ANY SOURCE MADE BY, OR ON BEHALF OF, A RESIDENT RELATING TO ANY  
24 ACTION, INACTION, OR DECISION, ~~BY A LONG TERM CARE FACILITY, A~~  
25 ~~GOVERNMENTAL ENTITY, OR A PRIVATE SOCIAL SERVICE AGENCY~~ THAT MAY  
26 ADVERSELY AFFECT THE HEALTH, SAFETY, WELFARE, OR RIGHTS OF A  
27 RESIDENT INCLUDING THE WELFARE AND RIGHTS OF RESIDENTS WITH RESPECT  
28 TO THE APPOINTMENT AND ACTIVITIES OF GUARDIANS AND REPRESENTATIVE  
29 PAYEES, OF:

30 (I) A PROVIDER, OR A REPRESENTATIVE OF A PROVIDER,  
31 OF LONG-TERM CARE SERVICES;

32 (II) A PUBLIC AGENCY; OR

1                   **(III) A HEALTH OR SOCIAL SERVICE AGENCY;**

2                   **(2) REPRESENT THE INTERESTS OF RESIDENTS BEFORE**  
3 **GOVERNMENTAL AGENCIES AND SEEK ADMINISTRATIVE, LEGAL, AND OTHER**  
4 **REMEDIES TO PROTECT THE HEALTH, SAFETY, WELFARE, AND RIGHTS OF**  
5 **RESIDENTS;**

6                   **(3) PROVIDE INFORMATION AS APPROPRIATE TO OTHER**  
7 **AGENCIES AND THE PUBLIC REGARDING THE PROBLEMS AND CONCERNS OF**  
8 **RESIDENTS;**

9                   **(4) INFORM RESIDENTS, FAMILY MEMBERS, AND OTHERS ACTING**  
10 **ON BEHALF OF RESIDENTS ABOUT HOW TO ACCESS THE ASSISTANCE AND**  
11 **SERVICES OF THE OFFICE AND THE SERVICES AND ASSISTANCE OF OTHER**  
12 **PROVIDERS OR AGENCIES, INCLUDING LEGAL SERVICES;**

13                   **(5) ENSURE REGULAR AND TIMELY ACCESS TO AND RESPONSE**  
14 **FROM THE OFFICE;**

15                   **(6) COMMENT ON, FACILITATE PUBLIC COMMENT ON, AND**  
16 **RECOMMEND CHANGES TO EXISTING OR PROPOSED LAWS, RULES,**  
17 **REGULATIONS, AND OTHER GOVERNMENTAL POLICIES AND ACTIONS THAT**  
18 **AFFECT THE HEALTH, SAFETY, WELFARE, AND RIGHTS OF RESIDENTS;**

19                   **(7) PROVIDE TECHNICAL SUPPORT FOR THE DEVELOPMENT OF**  
20 **RESIDENT AND FAMILY COUNCILS TO PROTECT THE WELL-BEING AND RIGHTS**  
21 **OF RESIDENTS;**

22                   **(8) PROVIDE FOR THE EDUCATION AND TRAINING OF**  
23 **OMBUDSMEN;**

24                   **(9) EDUCATE FACILITIES, AGENCIES, AND STAFF MEMBERS**  
25 **CONCERNING THE RIGHTS AND WELFARE OF RESIDENTS;**

26                   **(10) PROMOTE THE DEVELOPMENT OF CITIZEN ORGANIZATIONS**  
27 **TO ADVOCATE FOR THE WELL-BEING AND RIGHTS OF RESIDENTS;**

28                   **(11) ~~PROVIDE TECHNICAL SUPPORT FOR THE DEVELOPMENT OF~~**  
29 **~~RESIDENT AND FAMILY COUNCILS TO PROTECT THE WELL-BEING AND RIGHTS~~**  
30 **~~OF RESIDENTS~~ PROVIDE SERVICES TO ASSIST RESIDENTS IN PROTECTING THE**  
31 **HEALTH, SAFETY, WELFARE, AND RIGHTS OF RESIDENTS; AND**

1           **(12) CARRY OUT ANY OTHER ACTIVITIES THAT THE SECRETARY**  
2 **DETERMINES TO BE APPROPRIATE OR THAT ARE REQUIRED BY THE FEDERAL**  
3 **OLDER AMERICANS ACT.**

4 **10-904.**

5           **(A) ENTITIES ELIGIBLE TO BE DESIGNATED AS LOCAL LONG-TERM**  
6 **CARE OMBUDSMAN ENTITIES SHALL:**

7                   **(1) HAVE DEMONSTRATED CAPABILITY TO CARRY OUT THE**  
8 **RESPONSIBILITIES OF THE OFFICE;**

9                   **(2) BE PUBLIC OR NONPROFIT ~~AGENCIES~~ ENTITIES;**

10                   **(3) BE FREE OF CONFLICTS OF INTEREST; AND**

11                   **(4) MEET ANY ADDITIONAL REQUIREMENTS THAT THE**  
12 **SECRETARY AND THE STATE LONG-TERM CARE OMBUDSMAN SPECIFY.**

13           **(B) (1) THE SECRETARY, IN CONSULTATION WITH AREA AGENCIES**  
14 **ON AGING, SHALL ADOPT REGULATIONS TO ESTABLISH REQUIREMENTS FOR**  
15 **TRAINING AND DESIGNATING OMBUDSMEN, INCLUDING IN-SERVICE TRAINING.**

16                   **(2) THE REGULATIONS SHALL PROHIBIT THE STATE LONG-TERM**  
17 **CARE OMBUDSMAN FROM DESIGNATING AN INDIVIDUAL AS AN OMBUDSMAN**  
18 **UNLESS THE INDIVIDUAL HAS SUCCESSFULLY COMPLETED THE REQUIRED**  
19 **TRAINING AND SATISFIED THE REQUIREMENTS FOR DESIGNATION.**

20 **10-905.**

21           **IN ACCORDANCE WITH REQUIREMENTS OF THE FEDERAL OLDER**  
22 **AMERICANS ACT, AN OMBUDSMAN SHALL HAVE ACCESS TO:**

23                   **(1) LONG-TERM CARE FACILITIES AND RESIDENTS;**

24                   **(2) THE MEDICAL AND SOCIAL RECORDS OF A RESIDENT, IF:**

25                           **(I) THE OMBUDSMAN HAS THE PERMISSION OF THE**  
26 **RESIDENT OR THE LEGAL REPRESENTATIVE OF THE RESIDENT; OR**

27                           **(II) THE RESIDENT IS UNABLE TO CONSENT AND HAS NO**  
28 **LEGAL REPRESENTATIVE;**

29                   **(3) THE RECORDS THAT ARE NECESSARY TO INVESTIGATE A**  
30 **COMPLAINT IF:**

1 (I) A LEGAL GUARDIAN OF THE RESIDENT REFUSES TO  
2 GIVE PERMISSION TO ACCESS THE RECORDS;

3 (II) THE OMBUDSMAN HAS REASONABLE CAUSE TO BELIEVE  
4 THAT THE GUARDIAN IS NOT ACTING IN THE BEST INTERESTS OF THE RESIDENT;  
5 AND

6 (III) THE OMBUDSMAN OBTAINS THE APPROVAL OF THE  
7 STATE LONG-TERM CARE OMBUDSMAN;

8 (4) THE ADMINISTRATIVE RECORDS, POLICIES, AND DOCUMENTS  
9 OF LONG-TERM CARE FACILITIES TO WHICH THE RESIDENTS OR MEMBERS OF  
10 THE GENERAL PUBLIC HAVE ACCESS; AND

11 (5) COPIES OF ALL LICENSING AND CERTIFICATION RECORDS  
12 MAINTAINED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OR ANY  
13 OTHER STATE UNIT WITH RESPECT TO LONG-TERM CARE FACILITIES.

14 10-906.

15 (A) THE SECRETARY, IN CONSULTATION WITH AREA AGENCIES ON  
16 AGING, SHALL ADOPT REGULATIONS TO GOVERN CONFLICTS OF INTEREST TO  
17 ENSURE THAT:

18 (1) NO INDIVIDUAL, OR MEMBER OF THE IMMEDIATE FAMILY OF  
19 AN INDIVIDUAL, INVOLVED IN THE DESIGNATION OF THE STATE LONG-TERM  
20 CARE OMBUDSMAN OR A LOCAL LONG-TERM CARE OMBUDSMAN ENTITY, IS  
21 SUBJECT TO A CONFLICT OF INTEREST; AND

22 (2) NO OMBUDSMAN OR IMMEDIATE FAMILY MEMBER OF AN  
23 OMBUDSMAN IS SUBJECT TO A CONFLICT OF INTEREST.

24 (B) THE SECRETARY, IN CONSULTATION WITH AREA AGENCIES ON  
25 AGING, SHALL ADOPT REGULATIONS GOVERNING ~~CONFIDENTIALITY AND~~  
26 ~~PRIVACY OF COMPLAINANTS.~~ THE CONFIDENTIALITY OF INFORMATION AND  
27 DOCUMENTS, INCLUDING RESIDENT RECORDS, FACILITY RECORDS, AND  
28 COMPLAINANT IDENTIFICATION.

29 10-907.

30 THE SECRETARY SHALL REQUIRE THE STATE LONG-TERM CARE  
31 OMBUDSMAN TO COORDINATE OMBUDSMAN SERVICES WITH:

32 (1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;

1           (2)    THE DEPARTMENT OF HUMAN RESOURCES;

2           (3)    PROTECTION AND ADVOCACY SYSTEMS FOR INDIVIDUALS  
3 WITH DEVELOPMENTAL DISABILITIES AND MENTAL ILLNESSES; AND

4           (4)    LEGAL ASSISTANCE.

5   **10-908.**

6           THE SECRETARY SHALL ESTABLISH AND MAINTAIN A STATEWIDE  
7 UNIFORM REPORTING SYSTEM FOR THE PROGRAM TO COLLECT AND ANALYZE  
8 DATA RELATING TO COMPLAINTS AND CONDITIONS IN LONG-TERM FACILITIES  
9 AND TO RESIDENTS FOR THE PURPOSE OF IDENTIFYING AND RESOLVING  
10 SIGNIFICANT PROBLEMS.

11   **10-909.**

12           THE STATE LONG-TERM CARE OMBUDSMAN SHALL SUBMIT AN ANNUAL  
13 REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY, IN ACCORDANCE  
14 WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE ACTIVITIES OF  
15 THE PROGRAM THAT INCLUDES RECOMMENDATIONS OF THE STATE  
16 LONG-TERM CARE OMBUDSMAN FOR IMPROVING SERVICES FOR RESIDENTS.

17   **10-910.**

18           (A)    IN ACCORDANCE WITH 42 U.S.C. § 3058G(J)(1), A PERSON MAY NOT  
19 WILLFULLY INTERFERE WITH AN OMBUDSMAN'S PERFORMANCE OF AN  
20 OFFICIAL DUTY.

21           (B)    A PERSON MAY NOT RETALIATE OR MAKE REPRISALS WITH  
22 RESPECT TO ANY PERSON WHO FILED A COMPLAINT WITH, OR PROVIDED  
23 INFORMATION TO, AN OMBUDSMAN.

24           (C)    A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A  
25 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING  
26 \$1,500.

27   **10-911.**

28           AN OMBUDSMAN IS NOT LIABLE UNDER STATE LAW FOR GOOD FAITH  
29 PERFORMANCE OF OFFICIAL DUTIES.

30           SECTION 3. AND BE IT FURTHER ENACTED, That:

1           (a) On or before July 31, 2010, the Department of Aging shall reconvene, and  
2 the State Long-Term Care Ombudsman shall attend meetings with the stakeholder  
3 groups involved in the Department's "A Plan for Excellence for the Maryland  
4 Long-Term Care Ombudsman Program" including the AARP Maryland, Maryland  
5 Disabilities Law Center, Legal Aid Bureau, United Seniors of Maryland, and Voices  
6 for Quality Care.

7           (b) (1) The State Long-Term Care Ombudsman shall expand the  
8 stakeholder group to include at least one nursing home resident or representative of a  
9 nursing home resident and one assisted living facility resident or representative of an  
10 assisted living facility resident.

11           (2) The nursing home resident or assisted living facility resident  
12 included in the stakeholder group, or the nursing home resident or assisted living  
13 facility resident who has a representative who is included in the stakeholder group  
14 shall be a current resident of a facility and may not be represented by any other  
15 member of the stakeholder group.

16           (c) (1) The stakeholder group shall meet at least quarterly until January  
17 2013, unless the stakeholder group determines that the meetings can be held less  
18 frequently.

19           (2) At the meetings, the Department shall provide updates, solicit  
20 input, and identify barriers to the progress to refine and implement the strategic  
21 action plan to improve the Ombudsman Program.

22           (3) Before the first meeting of the stakeholder group, the State  
23 Long-Term Care Ombudsman shall gather up-to-date names, addresses, and  
24 electronic mail addresses of the individuals who will represent the stakeholder groups  
25 to set dates for the meetings and ensure the timely dispersal of information required  
26 under this section.

27           (4) Between meetings, the Department shall provide information to  
28 the stakeholder group of any significant proposed actions regarding the Ombudsman  
29 Program.

30           SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take  
31 effect ~~October~~ June 1, 2010.